

Montana Water Court  
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**FILED**  
04/11/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43B-0770-R-2022  
Lambert, Kathryn  
5.00

MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

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CLAIMANT: Foote Family Trust

**CASE 43B-0770-R-2022**  
43B 194740-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

This claim appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE SPRING CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

This remark was not addressed through the objection process. The Water Court is required to

resolve the issue raised by an issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence.

On October 14, 2022 the Order Consolidating Case And Setting Deadlines Pursuant To Section 85-2-248(5), MCA was issued setting a November 14, 2022 deadline for the claimant to contact the Bozeman Regional DNRC Office [“DNRC”] and a December 14, 2022 deadline to file documentation resolving the issue remark. Nothing was filed by the claimant.

On November 21, 2022 the DNRC Memorandum was filed stating that Kathy Foote met with the DNRC and provided information. The DNRC Memorandum recommends a change to the point of diversion legal description. On January 6, 2023 the Court filed an Order Setting Filing Deadline Pursuant To Section 85-2-248, MCA setting a February 9, 2023 deadline for the claimant to file a written statement concerning whether it agrees or disagrees with the DNRC Memorandum. Nothing was filed by the claimant. On March 7, 2023 the Order Entering Default was entered. The DNRC Memorandum is viewable in the Court’s FullCourt Enterprise case management system.

#### APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. The Preliminary Decree states that the point of diversion legal description is section 24, T1S, R10E, PARK. The legal description should be GOVT LOT 1, SENESE section 24, T1S, R10E, PARK. The issue remark should be removed as resolved.

2. The Preliminary Decree also includes the following notice remarks:

ALTHOUGH NOT OBJECTED TO, THE PLACE OF USE WAS CHANGED TO REFLECT THE  
REDUCTION IN MAXIMUM ACRES IRRIGATED.

THIS INTERBASIN TRANSFER CLAIM WAS NOT INCLUDED IN THE 43A BASIN TEMPORARY  
PRELIMINARY DECREE ISSUED 08/03/1988.

These remarks should be removed as they have served their notice purposes.

#### CONCLUSION OF LAW

The DNRC Memorandum is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (9), MCA.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

#### **ELECTRONICALLY SIGNED AND DATED BELOW**

#### Service Via USPS Mail:

Foote Family Trust  
% Jonathan L & Kathleen Ann Foote  
252 Convict Grade Rd  
Livingston, MT 59047

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 194740-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** FOOTE FAMILY TRUST  
%FOOTE, JONATHAN L & KATHLEEN ANN TRUSTEES  
252 CONVICT GRADE RD  
LIVINGSTON, MT 59047

**Priority Date:** DECEMBER 19, 1950

**Type of Historical Right:** USE

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 224.00 GPM

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 3 - MODERATE

**\*Maximum Acres:** 5.00

**Source Name:** SPRING, UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1	SENESE	24	1S	10E	PARK

**Period of Diversion:** APRIL 15 TO SEPTEMBER 15

**Diversion Means:** DIKE

**Period of Use:** APRIL 15 TO SEPTEMBER 15

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	5.00		SE	24	1S	10E	PARK

**Total:** 5.00

THE PLACE OF USE IS IN TRACT 21, CERTIFICATE OF SURVEY NO. 80, PARK COUNTY.

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

194739-00      194740-00